IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 19596 of 2007(G)

AGAINST THE ORDER IN EP.482/03 IN
OS.526/1995 of PRL.MUNSIFF COURT,THRISSUR
.....

PETITIONER:

BALAKRISHNAN, "MURUKA NIVAS",
KORANGATTIL LANE, THRISSUR.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS:

ANTO J KODANKANDATHU,
S/O.KODANKANDATH OUSEPH, MANALUR VILLAGE,
THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/06/2007, ALONG WITH WPC 19602 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 19596 & 19602 OF 2007

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Dated this the 26th day of June, 2007.

J U D G M E N T

WPC 19596/07 is filed by the judgment debtor in E.P.482/03 in O.S.526/95 and the other writ petition is filed by the very same judgment debtor in E.P.483/03 in O.S.523/95. The decree holders in both the cases are different persons. I have perused the order in E.P.482/03. The order is "No payment. No evidence. Repeat Arrest Warrant". In the other case "No payment. Issue arrest warrant".

2. The learned counsel for the writ petitioner had shown me the counter filed by the writ petitioner in E.P.482/03 wherein it is contended that he has no means to pay and therefore he is not liable to be arrested in execution of the decree. Orders in both the cases are one line orders and it is not seen whether the Court was satisfied about the sufficiency of means and the negligence of the judgment debtor to pay the amount. Unless such a finding is recorded

issuance of arrest warrant may be directly against the provisions of Order 21 Rule 40 of C.P.C. Therefore, the orders under challenge are set aside and the matter is remitted back to the executing Court and it is directed to pass appropriate orders after affording an opportunity to both the sides to adduce evidence in support of their respective contentions. Since, I am disposing of this writ petition without notice to the respondent, the Court below shall give notice of the case to the decree holder before it proceed with the matter.

The writ petitions are disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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